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C O N F I D E N T I A L SECTION 01 OF 02 SOFIA 001971

SIPDIS

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TAGS: [MARR](#) [PGOV](#) [PREL](#) [BU](#)

SUBJECT: MOVING CLOSER TO AGREEMENT ON U.S. MILITARY ACCESS

REF: A. SOFIA 000924

[1](#)B. SOFIA 001796

Classified By: Amb. John Beyrle, for reasons 1.4 a and d.

[1](#)1. (C) SUMMARY: A negotiating team led by Ambassador Robert Loftis made substantial progress toward a supplemental Status of Forces Agreement (SOFA) and Defense Cooperation Agreement (DCA) with the GOB during talks in Sofia on November 16-17. The U.S. and GOB reached agreement in principle on most issues with the exception of taxation, importation/exportation, contracting procedures, criminal jurisdiction, operational flexibility, and strategic framework language. The U.S. team plans another visit to Sofia in January 2006, to be preceded in December by a technical team to discuss tax, importation and related mechanisms. END SUMMARY.

[1](#)2. (C) During November 16-17 negotiations in Sofia, the U.S. and Bulgarian delegations made progress in a number of areas, primarily in the draft Status of Forces Agreement. Agreement was reached in the following areas:

a. Preamble: The U.S. agreed to add a reference to the applicability of the NATO SOFA; however, the Bulgarian Ministry of Justice would prefer the reference as an operative paragraph.

b. Definitions are largely agreed. Further work remains to refine the definition of dependents, including the status of dependents who are also Bulgarian nationals who may be a member of the civilian component. Bulgaria agreed that Bulgarian employees could be considered a member of the civilian component for claims purposes.

c. Bulgaria will provide revised text on entry/exit of dependents and contractors.

d. Agreed to language on determination of official duty for alleged criminal offenses and civil liability.

e. Agreed to language on Custody and Access.

f. Agreed to language on Confinement and Visitation.

g. Agreed to language on Discipline.

h. Agreed to language on Security.

i. Agreed to language on Motor Vehicles and Drivers Licenses.

j. Agreed to language on Customs Procedures.

k. Agreed to language on Military Post Offices.

l. Agreed to language on Currency and Exchange (ad ref pending approval of the Central Bank).

m. Agreed to language on Utilities and Communications.

n. Agreed to language on Environment, Health and Safety.

[1](#)3. (C) The Bulgarians proposed a new article that would hold the U.S. one hundred percent liable for any damages it might cause. The U.S. rejected this as contradicting the NATO SOFA claims provisions. The U.S. also agreed to provide new language on contracting procedures to indicate that Bulgarian companies are eligible to bid on contracts (without, however, creating any obligations on the part of the U.S. to award contracts to Bulgarian entities). The U.S. will also provide language on construction standards.

[1](#)4. (C) Several key issues remain to be resolved. These include:

a. Criminal Jurisdiction: The Bulgarian team told Amb. Loftis that they had "already gone beyond" their mandate to negotiate on jurisdiction. As in the previous negotiating session, the Bulgarians expressed concern that substantially agreeing to the U.S. request for a blanket advance waiver (with recall provisions) would open the final agreement to constitutional court challenges from opponents in Parliament. Amb. Loftis noted that primary U.S. jurisdiction over U.S. service members had been granted by Parliament in temporary exercise support agreements (ESAs) on two occasions. The

Bulgarians termed the ESAs as "ad hoc" agreements that received little scrutiny. While willing to waive criminal jurisdiction for the limited period of the exercises, the Bulgarians said they were not prepared to accept a permanent waiver. The lead Bulgarian negotiator, Ambassador Lubomir Ivanov, stressed, "We need to discuss it (criminal jurisdiction) at a much higher level."

b. Operational flexibility: While the two sides did not discuss this issue in detail during the plenary sessions, it arose in a private meeting between Amb. Loftis, Amb. Ivanov, Foreign Affairs Committee chairman Passy, and defense committee chairman Naidenov on November 16. Noting constitutional restrictions on foreign forces, Naidenov asked if the U.S. planned to launch offensive military operations from Bulgarian territory. Amb. Loftis said that the U.S. envisions having a maximum of only 2,500 troops in Bulgaria at any given time, an unlikely force for offensive actions. Amb. Loftis said that while the U.S. wants to find ways to accommodate Bulgaria's concerns, the U.S. requires the flexibility to move our forces where and when needed. Moreover, the proposed Bulgarian provision that would link the U.S. presence solely to NATO is unacceptable: this is a bilateral agreement. During the closing of the plenary session, Amb. Ivanov again referred to pending legislation on foreign troop presence in Bulgaria, but noted that the GOB is willing to find a way to meet American concerns and is not wedded to its draft language.

c. Strategic Framework: Ivanov reiterated the GOB's desire to include language for a "strategic framework" (see reftels A and B) noting that "such a structure would be more convincing to the public" and would help sell the agreement. Ivanov said that the GOB is flexible in how this language is integrated into the agreement and would be open to "less detailed" provisions. Amb. Loftis replied that the United States prefers separate, discrete agreements as more appropriate and easier to manage, but that we would consider the Bulgarian approach and discuss it in more detail at our next meeting.

15. (C) To move the taxation issue forward, a team of U.S. experts will visit Sofia in December to continue technical discussions on taxation, importation/exportation, contracting procedures and related issues. The purpose is not/not to negotiate the texts, but to explain to Bulgarian authorities how the U.S. handles these issues with other partners. Once the Bulgarians understand the mechanisms better, they will be in a better position to agree to language in the agreement. (This practice was immensely helpful in reaching agreement on the environmental, security and communications articles.)

16. (C) Ivanov was unexpectedly called away from the negotiating table on November 17 by Foreign Minister Kalin to discuss a phone call from the Romanian foreign minister. The Romanians had heard a rumor that a U.S. official in Washington had said that the talks were not going well and that the U.S. delegation saw no reason to continue negotiating. Amb. Loftis denied that any U.S. official had made such a statement and gave Ivanov a transcript of statements by Department spokesman Adam Ereli on November 16 indicating that negotiations were proceeding well. The Bulgarians were satisfied with this explanation.

17. (C) Our public outreach plan, undertaken in October to counter misinformation, has had positive results. We and the MFA have developed a joint public diplomacy strategy through which we share talking points and coordinate information posted on our respective web sites. At our urging, Prime Minister Stanishev publicly stated his support November 4 for "the establishment of a rotating brigade stationed in Bulgaria and Romania." During this visit, Amb. Loftis gave one newspaper interview and one television interview that were generally well-reported.

18. (C) COMMENT: The talks proceeded in a friendly, constructive atmosphere. As most technical issues have been substantially agreed to, the challenge in the next round will be to address criminal jurisdiction, operational flexibility, and the strategic framework. Despite warnings from the Bulgarians to avoid anything that would be open to constitutional challenges, Ivanov signaled the GOB's desire reach agreement. We will maintain our public diplomacy efforts and continue to urge influential Bulgarians, both in and out of government, to speak out in favor of the agreement. END COMMENT.

19. (U) This cable has been cleared with Ambassador Robert Loftis.
BEYRL